



**MILPITAS CITY COUNCIL MEETING AGENDA
JUNE 19, 2007**

7:00 P.M.

**NOTE: NO CLOSED SESSION
455 E. CALAVERAS BOULEVARD**

SUMMARY OF CONTENTS

- I. CALL TO ORDER/ROLL CALL (7:00 p.m.)**
- II. PLEDGE OF ALLEGIANCE**
- III. INVOCATION** (Councilmember Giordano)
- IV. APPROVAL OF MINUTES** (June 5, 2007)
- V. SCHEDULE OF MEETINGS/COUNCIL CALENDAR**
- VI. PRESENTATIONS**

Proclamation: Parks and Recreation Month – July 2007

Commendation: Strategic Actions for Emergencies (SAFE) Program

VII. PUBLIC FORUM

Members of the audience are invited to address the Council on any subject not on tonight's agenda. Speakers must come to the podium, state their name and city of residence for the Clerk's record, and limit their remarks to three minutes. As an unagendized item, no response is required from City staff or the Council and no action can be taken; however, the Council may instruct the City Manager to agendize the item for a future meeting.

VIII. ANNOUNCEMENTS

- IX. ANNOUNCEMENT OF CONFLICT OF INTEREST**
- X. APPROVAL OF AGENDA**
- XI. CONSENT CALENDAR** (Items with Asterisks*)
- XII. PUBLIC HEARINGS**

- 1. Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)**
- 2. Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Mehdi Khaila, 586-3328)**
- 3. Approve Entertainment Event Permit and Waive Fees for the "Celebrate Milpitas" Festival August 18-19, 2007 Sponsored by the Milpitas Chamber of Commerce (Staff Contact: Mary Lavelle, 586-3001)**

XIII. UNFINISHED BUSINESS

- 4. Receive Youth Sports User Group Task Force Update (Staff Contact: Bonnie Greiner, 586-3227)
- * 5. Odor Control Comprehensive Action Plan Update (Staff Contact: Kathleen Phalen, 586-3345)

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

- RA1. Call to Order by the Mayor/Chair
- RA2. Roll Call
- RA3. Approval of Minutes (June 5, 2007)
- RA4. Approval of Agenda and Consent Calendar
- RA5. Approve New Holiday Season Banners (Staff Contact: Diana Whitecar, 586-3059)
- *RA6. Approve Amendment to Contract with Conley Consulting Agreement for \$4,500 to Complete the Industrial Land Use Analysis for a Total Contract Amount not to exceed \$44,500 (Staff Contact: Diana Whitecar, 586-3059)
- * RA7. Approve Certificate of Completion for Certain Residential Units within Tract No. 9698 for KB Home, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)
- *RA8. Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Noll & Tam Architects for the Milpitas Senior Center, Project No. 8176 (Staff Contact: Bonnie Greiner, 586-3227)
- RA9. Agency Adjournment

XV. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

- * 6. Approve Mayor Esteves' Recommendations for Appointments/Re-Appointments to City Commission (Contact: Mayor Esteves, 586-3029)

XVI. NEW BUSINESS

- * 7. Authorize the Purchasing Agent to Dispose of Nine Surplus Vehicles at Auction (Staff Contact: Chris Schroeder, 586-3161)
- * 8. Approve Out-Of-State Training for Fire Chief and Travel Reimbursement (Staff Contact: Clare Frank, 586-2811)
- * 9. Request to Authorize Hiring a Temporary Dedicated Building Inspector for D.R. Horton Project (Staff Contact: Keyvan Irannejad, 586-3244)
- * 10. Receive Comments on Grand Jury Report Addressing Disaster Preparedness Improvements Needed in the County (Staff Contact: Americo Silvi, 586-2827)
- * 11. Accept the Wal-Mart Safe Neighborhood Heroes Grant (Staff Contact: Sandy Holliday, 586-2433)

XVII. ORDINANCES

- * 12. Waive Second Reading and Adopt Ordinance No. 65.135 requiring Automatic Gas Shut-off Devices on new buildings (Staff Contact: Keyvan Irannejad, 586-3244)
- * 13. Waive Second Reading and Adopt Ordinance No 197.10, Approving the Reorganization of Parks and Recreation by Amending Section 1.00 of Chapter 3, Title VI of the Milpitas Municipal Code Related to Departments (Staff Contact: Emma Karlen, 586-3145)
- * 14. Waive Second Reading and Adopt Ordinances No. 192.20 and No. 192.21, Adopting the Milpitas Redevelopment Agency Program to Acquire Real Property by Eminent Domain (Staff Contact: Diana Whitecar, 586-3059)
- * 15. Waive Second Reading and Adopt Ordinance 270.2 Prohibiting Medical Marijuana Dispensaries in Milpitas (Staff Contact: Peter Spoerl, 586-3040)

XVIII. RESOLUTIONS

- 16. Adopt Resolution Approving Memorandum of Understanding with Milpitas Employees Association (MEA) (Staff Contact: Carmen Valdez, 586-3086)
- * 17. Adopt Resolution Granting Initial Acceptance of the Hetch-Hetchy Right-of-Way Landscape Renovation, Project No. 5053 (Staff Contact: Greg Armendariz, 586-3317)

XIX. BIDS AND CONTRACTS

- * 18. Authorize the City Manager to Accept Office of Grants and Training Preparedness Directorate Grant Funds (Staff Contact: Michael Lopez, 586-2802)
- * 19. Authorize the City Manager to Execute the Agreement Between the City of Milpitas and the County of Santa Clara for Acceptance of State Homeland Security Grant Funds (Staff Contact: Americo Silvi, 586-2827)
- * 20. Approve the Third Amendment to the Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and the City of Milpitas and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)
- * 21. Approve the Senior Nutrition Contract Between the County of Santa Clara (Social Services) and the City of Milpitas, and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)
- * 22. Approve the Third Amendment to the Contract Between the City of Milpitas and New Orient Restaurant, and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)
- * 23. Authorize the City Manager to Execute a Consulting Services Agreement Between the City of Milpitas and HF&H Consultants for Solid Waste Rates and Services Negotiation Assistance (Staff Contact: Kathleen Phalen, 586-3345)
- * 24. Authorize the City Manager to Execute Amendment No. 1 to the Agreement for Commercial Recycling Outreach with Pat Davis Design Group (Staff Contact: Leslie Stobbe, 586-3352)
- * 25. Approve Provisionally Accredited Levee Agreement with the Federal Emergency Management Agency (FEMA) (Staff Contact: Mehdi Khaila, 586-3327)

- * 26. Approve Encroachment Agreement with Dynamic Details Incorporated, Silicon Valley for Installation Network Cables Within City Public Right of Way, Project No. 2492 (Staff Contact: Mehdi Khaila, 586-3328)
- * 27. Award the Bid for Diesel Vehicle Retrofit to Ironman Parts and Service (Staff Contact: Chris Schroeder, 586-3161)
- * 28. Approve Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Carmen Valdez, 586-3086)
- * 29. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for 2008 Slurry Seal Project, Project No. 4242 (Staff Contact: Andrew Brozyna, 586-3315)
- * 30. Approve purchase orders for (1) general legal and personnel services; (2) arbitration, grievance and PERB hearings; and (3) public works and enterprise operations litigation legal services and expenses provided by Meyers Nave for Fiscal Year 2007-2008 (Staff Contact: Steve Mattas, 586-3040)
- * 31. Authorize the City Engineer to Execute a Contract Change Order with O'Grady Paving, Inc. and Approve Budget Appropriation for 2007 Street Resurfacing Project, Project No. 4236 (Staff Contact: Andrew Brozyna, 586-3315)

XX. CLAIMS AND DEMANDS

- * 32. Approve Payment Request to Valley Oil for City's Annual Supply of Diesel and Unleaded Fuel (Staff Contact: Chris Schroeder, 586-3162)

XXI. ADJOURNMENT

NOTE: NO CITY COUNCIL MEETINGS IN JULY

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 7, 2007, AT 7:00 P.M.**

KNOW YOUR RIGHTS UNDER THE OPEN GOVERNMENT ORDINANCE

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils and other agencies of the City exist to conduct the people's business.

This ordinance assures that deliberations are conducted before the people and the City operations are open to the people's review. FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE OPEN

GOVERNMENT ORDINANCE OR TO REPORT A VIOLATION OF THE ORDINANCE,

CONTACT THE OPEN GOVERNMENT SUBCOMMITTEE

at the City Attorney's office at Milpitas City Hall, 455 E. Calaveras Blvd., Milpitas, CA 95035

E-mail: rpioroda@ci.milpitas.ca.gov / Fax: 408-586-3030 / Phone: 408-586-3040

A free copy of the Open Government Ordinance is available from the City Clerk's Office or by visiting the City's website www.ci.milpitas.ca.gov, select Open Government Ordinance under News Features.

BECOME A CITY COMMISSIONER!

Currently, there are openings on the following Commissions:

Bicycle Pedestrian Advisory Commission

Community Advisory Commission

Economic Development Commission (rep. for Hotel Industry)

Library Advisory Commission

Mobile Home Park Rental Review Board

Planning Commission

Recycling & Source Reduction Advisory Commission (2 alternates)

Applications are available online at www.ci.milpitas.ca.gov or outside the City Council Chambers.

Contact the City Clerk's Office (586-3003) for more information.

AGENDA REPORTS

XII.PUBLIC HEARINGS

- 1. Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Project No. 9474 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: On June 5, 2007, the Council adopted Resolution of Intention No. 7683 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 95-1. District provides for the servicing and maintaining the public landscaping and additional lighting along North McCarthy Boulevard and the Gateway feature on Ranch Drive. An annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district.

The total assessment for the district in the Annual Engineer's Report is \$274,480.60 for FY 2007-08. The assessment for FY 2007-08 is within the previously approved range of assessments and includes the application of the approved annual Consumer Price Index (CPI) escalation.

Recommendations:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt Resolution approving Annual Engineer's Report, Confirm Diagram and assessment and ordering levy of assessments for Fiscal Year 2007-08, for Landscaping and Lighting Maintenance Assessment District No. 95-1.

- 2. Adopt Resolution Approving the Annual Engineer's Report and the Levying of Assessment for Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Project No. 9489 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: On June 5, 2007, the Council adopted Resolution of Intention No. 7684 to levy annual assessments for the Landscaping and Lighting Maintenance Assessment District No. 98-1. The District provides for servicing and maintaining the public landscaping along Sinclair Frontage Road, Los Coches Creek and Berryessa Creek abutting the Sinclair Horizon residential subdivision. An annual public hearing is necessary to adopt the Annual Engineer's Report to provide funds for the district.

The total assessment for the district in the Annual Engineer's Report is \$34,568.52 for FY 2007-08. The assessment for FY 2007-08 is within the previously approved range of assessments and includes the application of the approved annual Consumer Price Index (CPI) escalation.

Recommendations:

1. Open the public hearing, receive any written protests, and hear testimony.
2. Close the public hearing.
3. Adopt Resolution approving Annual Engineer's Report, Confirm Diagram and assessment and ordering levy of assessments for Fiscal Year 2007-08, for Landscaping and Lighting Maintenance Assessment District No. 98-1.

- 3. Approve Entertainment Event Permit and Waive Fees for the "Celebrate Milpitas" Festival August 18-19, 2007 Sponsored by the Milpitas Chamber of Commerce (Staff Contact: Mary Lavelle, 586-3001)**

Background: The Milpitas Chamber of Commerce submitted an application for an Entertainment Event Permit to hold the annual "Celebrate Milpitas" Festival (formerly the Art & Wine Summer Festival) along S. Milpitas Boulevard between Los Coches and Turquoise Streets and continuing west on Los Coches on Saturday, August 18, and Sunday, August 19 from 10:00

a.m. to 6:00 p.m. each day. The application was reviewed and approved by City departments and the public hearing advertised as required by the municipal code.

The Chamber of Commerce is also requesting a waiver of the business license requirements for vendors, the fire inspection fee, any electrical permit fee and other potential City fees for the Festival. City Council has the authority to exempt vendors from the requirements for the business license or other related fees. The Council has waived the fees and approved the Entertainment Event Permit in previous years.

Additionally, one of the performers requests, through the Chamber, for use of the portable stage over two days. The Chamber requests of behalf of "South Bay Kids" music group to use the City's portable entertainment stage and a waiver of the \$350 daily rental fee and \$1000 deposit, which are the usual charges.

For the second year in a row, the Chamber of Commerce has hired a professional festival manager, Mr. James Reber, to coordinate the event. Mr. Reber and Chamber representatives will be present at the Public Hearing to answer any questions the City Council may have about the summer time festival.

Recommendations

1. Open the Public Hearing for comments.
2. Close the public hearing.
3. Waive business license fees (typically \$25 per vendor), electrical permit fee (approx. \$149), fire inspection fee (approx. \$400), and fees related to the portable stage (\$350 per day rental + \$1000 deposit).
4. Approve the Entertainment Event Permit for the "Celebrate Milpitas" Festival to be held August 18 and 19, 2007, as requested by the Milpitas Chamber of Commerce, subject to the conditions noted and receipt of a current certificate of insurance.

XIII. UNFINISHED BUSINESS

4. Receive Youth Sports User Group Task Force Update (Staff Contact: Bonnie Greiner, 586-3227)

Background: At the City Council meeting of February 20, 2007, the City Council instructed staff to form a Task Force of the Youth Sport User groups, within the community, to discuss topics related to field usage within the City, including the permit process, field allocation, field usages and challenges.

All community Youth Sports Users groups were invited to attend the Task Force meeting in March and April. Letters were sent to eleven groups including: Police Athletic League (PAL) Football, PAL Soccer, PAL Jr. Giants Baseball, Little League North and South, North Valley Bobby Sox, Milpitas Fast Pitch Softball, Milpitas High School Red Devils Baseball, Milpitas Youth Soccer, Milpitas Unified School District, and Cal Aces Heat (softball).

The groups had open, constructive communication, with the following topics being addressed:

1. Sports playing year round in non-traditional season
2. Mixed field use
3. Reserving/blanketing fields and not showing to play
4. Lack of communication between organizations and city liaison
5. Growth of user groups and status quo fields

The Task Force unanimously agreed on the following and will continue to meet quarterly to discuss any concerns and /or challenges facing their respective groups.

1. To continue with the existing Priorities structure which has been established and approved by the City Council.
2. Sports playing year round in non-traditional season: the Task Force unanimously agreed to give priority to the traditional sports in traditional seasons. Should remaining fields be available, they would be offered to the next requestor in the priorities established by the City Council.
3. Mixed field use: This will be handled on a case-by-case basis between the City and the requested sports/user groups. Some ages and activities are appropriate and can accommodate shared usages, without placing anyone in harm's way.
4. Reserving fields and not showing to play: All groups agreed to release unused field reservations after a final season schedule has been completed. This issue will be resolved by more open communication between the user groups directly and possibly a web site, and e-mail notifying other users when fields become available. Inclement weather plays a major role by groups having to "blanket" fields to meet league obligations.
5. With City staff coordinating meetings, PAL Soccer and MYSC will begin a collaborative effort to share and maximize soccer field space while working together.

Staff will continue to meet with the Task Force and to have open communications with all. Due to the limited fields within the city, this will be an ongoing challenge of trying to accommodate all field requests. Field number and usage will also be addressed in the future Parks Master Plan. With the support of all involved, our goal is to provide and maintain a successful environment, and demonstrate sportsmanship and cooperation at all times in providing the youth of Milpitas a safe and positive athletic experience.

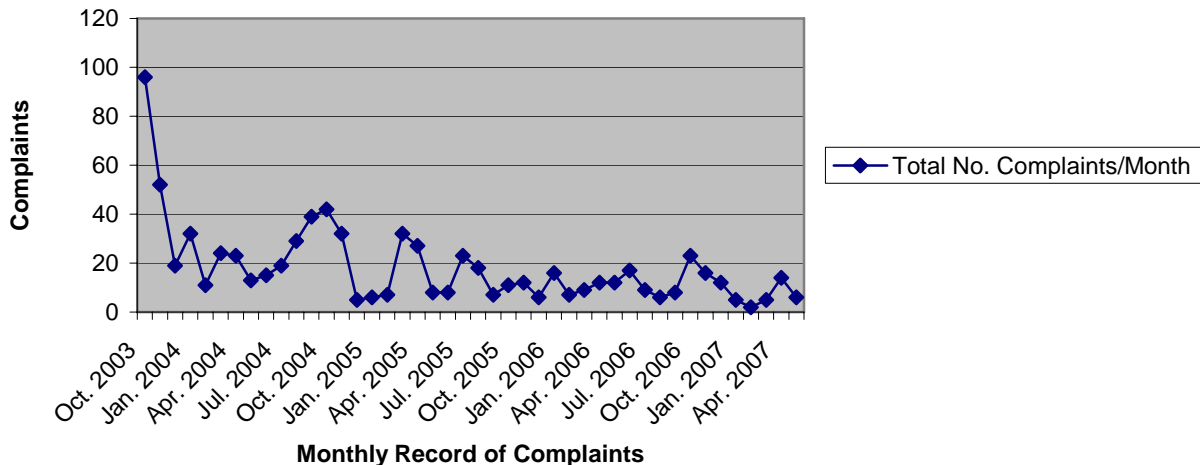
Recommendation: As recommended by the Task Force, to continue with the current policies and procedures, which have been adopted and approved by the City Council, and to have staff continue to work with the Task Force quarterly to review all policies, procedures, field requests and all elements related to field, and user groups.

* **5. Odor Control Comprehensive Action Plan Update (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The Bay Area Air Quality Management District (BAAQMD) Rapid Notification system continues to receive odor complaints from the public and transmit real-time advisories via email to the potential odor sources and City staff. The City now has over three and one-half years of complaint records to monitor the effectiveness of the notification system.

During the past three months, the number of odor complaints has remained relatively low, as shown in the graph which follows.

October 2003 - June 11, 2007 Odor Complaint Summary



Recommendation: Receive the progress report on odor control reporting.

XIV. JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

RA1. Call to Order by the Mayor/Chair

RA2. Roll Call

RA3. Approval of Minutes (June 5, 2007)

RA4. Approval of Agenda and Consent Calendar

RA5. Approve New Holiday Season Banners (Staff Contact: Diana Whitecar, 586-3059)

Background: In June 2006, the City Council approved a new banner program and policy that established guidelines for banner size and new locations for banner installation. The banner program celebrates strong community values fulfilled throughout the City's recreation services programs, alternative transportation, economic development and recycling services programs. The banners announce Milpitas as a great place to "Live & Work," "Stay & Play," "Stop & Shop" and "Meet & Greet." These colorful banners have been well received by the public and reinforce Milpitas community values to visitors, employees and residents.

Since the banners were installed in January 2007, they have remained in place except for the times that the Arbor Day and Great American City banners were installed. The next change will be for the "ARTitude Awareness" banners in the fall.

Holiday Banners: The existing holiday banners were purchased in 1998 and reflect generic season greetings. Staff recommends that new holiday banners be purchased that convey seasonal themes and local events, and also "green" gift giving ideas "Recycle & Reuse" and further strengthen the goal of "Stop & Shop" in Milpitas."

The new holiday banners would be located along Main Street and along Calaveras Boulevard from Abbott Avenue to Park Victoria where the street light poles host banner hardware. Staff also recommends that new banner hardware be installed on Calaveras Boulevard east of Park Victoria to Carnegie Drive. Once the holiday season is over, the banners will be replaced by "Stay & Play" banners and announce the entrance to the Milpitas Sports Center.

Approximately 150 new banners are needed to have new holiday banners and additional banners and hardware for the Calaveras Boulevard extension. Based on the pricing for the themed banners in 2006, estimated costs for banner fabrication, hardware, delivery and taxes will not exceed \$22,000. There are available funds in adopted budgets for this activity.

Recommendation: Approve the holiday banner program and authorize staff to solicit bids for fabrication and hardware for the new banners.

- *RA6. Approve Amendment to Contract with Conley Consulting Agreement for \$4,500 to Complete the Industrial Land Use Analysis for a Total Contract Amount not to exceed \$44,500 (Staff Contact: Diana Whitecar, 586-3059)**

Background: The City Council approved a contract with Conley Consulting Group (CCG) on June 20, 2006 for the Industrial Land inventory and Analysis. CCG completed their draft report in August 2006 and completed their portion of the report in late December 2006. Completion of the report was delayed to include the Projections 2007 data from the Association of Bay Area Government (ABAG) and more pertinent lease data.

Over the last few months, staff has worked to finalize the report and present it to the Economic Development Commission, the Planning Commission and the City Council. The report will include policy recommendations for the retention of prime industrial property, will propose policies that allow for the transition of some industrial space to reflect market demand and will identify what is needed to retain a balance of jobs and housing for future development and redevelopment in Milpitas.

Completion of the report requires additional work by CCG, to update and analyze new data, incorporate staff revisions and reflect recent development activity.

Fiscal Impact: Funds for this amendment are available in the FY 2006-07 Economic Development Operating budget, Fund 390.

Recommendation: Approve a contract amendment for \$4,500 with Conley Consulting Group to complete the Industrial Land Inventory and Analysis for a total contract amount not to exceed \$44,500.

- * RA7. Approve Certificate of Completion for Certain Residential Units within Tract No. 9698 for KB Home, Project No. 3160 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: On January 18, 2005, the City of Milpitas Redevelopment Agency and KB Home South Bay, Inc., entered into a Disposition and Development Agreement (DDA) concerning the residential development, Terra Serena, north and east of the county's Elmwood Correctional Facility. The recorded grant deed, which conveyed the subject real property from the Agency to KB Home, requires that the Redevelopment Agency issue a Certificate of Completion upon the completion of the infrastructure improvements in accordance with the DDA. Certain improvements have been satisfactorily completed to serve certain residential units as shown on the attached Certificate of Completion, and therefore occupancy may be granted to only those housing units.

Recommendation: Authorize the Agency Executive Director to execute this Certificate of Completion, pertaining to certain residential units (described on the Certificate of Completion document), for KB Home Terra Serena Project No. 3160, subject to approval of the City Attorney as to form.

- *RA8. Authorize the City Manager to Execute Amendment No. 2 to the Agreement with Noll & Tam Architects, for the Milpitas Senior Center, Project No. 8176 (Staff Contact: Bonnie Greiner, 586-3227)**

Background: The City Council awarded a design services contract in August 2006 to Noll and Tam Architects for design of the new Milpitas Senior Center, Project No. 8176. The existing Community Library building will be remodeled to serve as the new Senior Center. The first phase of work involved evaluating community needs, inviting public input, and assessing the existing building.

In December 2006, the City Council authorized a scope amendment to evaluate the civic center setting and the adjacent Community Center building in conjunction with the Senior Center, in order to better plan for long-term community-wide needs. Based on the resulting evaluation, a variety of options for the new Senior Center were developed. The options included remodel of the existing structure, expansion of the existing structure to 25,000 square feet, phased expansion, and alternatives for a new structure. The Senior Center Facilities Subcommittee reviewed concepts on February 27, 2007 and forwarded a recommendation to the City Council on April 3. The City Council provided input on the concepts, was in favor of expanding the existing building, and requested additional information.

At the April 17, 2007 City Council meeting, staff presented a funding plan that would cover the cost to expand the Senior Center. The Council provided further direction regarding the project and potential funding sources for an expansion option. In response to the City Council's input, at the May 1 City Council meeting, a revised expansion option was presented. This option expanded the Senior Center to approximately 22,000 square feet, with the added space focusing on senior program needs. The City Council endorsed this alternative, together a total project budget not to exceed \$15.5 million.

The current consultant services contract with the Noll & Tam design team assumed that the Senior Center would be created through a remodel of the existing library building. The expansion alternative selected by the City Council involves design and construction of a new wing, appropriate structural upgrades for structural compatibility between the new and older structures, compliance with current code requirements, and additional geotechnical and site work. The scope of design services needs to be modified to include these items. The proposed project budget includes funding to cover the expanded scope of design work.

The consultant services agreement with Noll and Tam Architects will be amended to include the design of the senior center expansion. Staff negotiated a fee for these added design services not to exceed \$289,000. Staff also recommends including an allowance of \$25,000 for additional services. Design of the new wing requires geotechnical evaluation and additional structural considerations. The recommended allowance will be available to address potential unknowns. The fee is considered reasonable for the scope of work. There are sufficient funds in the project budget to cover this expense.

Recommendation: Authorize the City Manager to execute a consulting services agreement Amendment No. 2 with Noll & Tam Architects, in an amount not to exceed \$314,000, subject to approval as to form by the City Attorney.

RA9. Agency Adjournment

XV. REPORTS OF OFFICERS, COMMISSIONS, AND COMMITTEES

City Council

- * 6. Approve Mayor Esteves' Recommendations for Appointments/Re-Appointments to City Commissions (Contact: Mayor Esteves, 586-3029)**

Background: Mayor Esteves recommends the following Milpitas residents be appointed and re-appointed to Commissions as follows:

Bicycle Pedestrian Advisory Commission:

Appoint Jose Leon to a term that expires in August 2007.

Appoint Wei P. Sun as Alternate No. 1 to a term expiring in August 2008.

Citizens Emergency Preparedness Advisory Commission:

Re-appoint Lori Bersabe to a term that expires in June 2010.

Community Advisory Commission:

Appoint Reena Choudhury (current Alternate No. 1) as a regular member to a term expiring in January 2010.

Appoint Chinedu Nwobi (current Alternate No. 3) to Alternate No. 1 to a term expiring in January 2009.

Appoint Viramrinder Meharu (current Alternate No. 4) to Alternate No. 3 to a term expiring in January 2008.

Appoint Rajeev Madnawat as Alternate No. 4 to a term expiring in January 2008.

Library Advisory Commission:

Appoint Elpidio Estioko (current Alternate No. 1) as a regular member to a term that expires in June 2008.

Appoint Ha Phan (current Alternate No. 2) as Alternate No. 1 to a term that expires in June 2009.

Appoint Marie Pham as Alternate No. 2 to a term that expires in June 2009.

Parks, Recreation and Cultural Resources Commission:

Appoint Tim Chang (current Alternate No. 1) as a regular member to a term that expires in June 2010.

Appoint Naomi Matautia (current Alternate No. 2) as Alternate No. 1 to a term that expires in June 2008.

Appoint Freddie Cacao as Alternate No. 2 to a term that expires in June 2009.

Recycling and Source Reduction Advisory Commission:

Appoint Ricardo Ablaza to a term that expires in October 2008.

Appoint Marsha Binh Tran as Alternate No. 1 to a term that expires in October 2007.

Appoint Nika Chen as Alternate No. 2 to a term that expires in October 2008.

Recommendation: Move to approve the Mayor's recommended appointments and re-appointments to City of Milpitas Commissions.

XVI. NEW BUSINESS

- * **7. Authorize the Purchasing Agent to Dispose of Nine Surplus Vehicles at Auction (Staff Contact: Chris Schroeder, 586-3161)**

Background: The City has nine (9) vehicles as listed below that have reached the end of their useful lives. The cost to maintain the vehicles exceeds their values and they have been removed from service. Value of the vehicles at auction is estimated to range from \$1,000 to \$3,500 each. Staff requests authorization to dispose of the vehicles at auction pursuant to section I-2-8.03 of the Municipal Code "Disposal of more than \$1,000."

Unit 475F, a 1996 Ford Crown Vic
Unit 471S, a 1999 Ford E-350
Unit 453B, a 2002 Ford E-350
Unit 432Z, a 1989 Ford F-250
Unit 417Z, a 1994 Ford F-250
Unit 450Z, a 1991 Ford F-250
Unit 487Z, a 1992 Ford Bronco
Unit 460F, a 1995 Ford Crown Vic
Unit 471K, a 1994 Ford Crown Vic

Recommendation: Approve the request to auction nine City vehicles, as indicated.

- * 8. **Approve Out-Of-State Training for Fire Chief and Travel Reimbursement (Staff Contact: Clare Frank, 586-2811)**

Background: The Fire Chief was awarded the Harvard Fire Executive Fellowship, which is a three-week program at Harvard's Kennedy School of Government in Cambridge, Massachusetts. The program costs approximately \$11,000, which will be borne by the agency awarding the fellowship, the National Fire Protection Association. The travel costs are not covered by the fellowship, but should not exceed \$900. The reimbursement will come from the City's Education and Training reimbursement fund.

Recommendation: Approve the out-of-state training and travel reimbursement for Fire Chief.

- * 9. **Request to Authorize Hiring a Temporary Dedicated Building Inspector for D.R. Horton Project (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: DR Horton Inc. has requested an additional dedicated, full-time building inspector for the Paragon project, to provide continuous and uninterrupted service for the duration of construction. Such service is currently provided by the City to DR Horton's Centria project and other major projects, proven to be beneficial to both sides. It allows the City to provide a high level of customer service by considerably reducing the number of re-inspections, streamlining and maintaining construction schedules, and minimizing the number of construction revisions. Existing workload will not allow the City to provide an additional dedicated building inspector from the current staff to the DR Horton projects. The request necessitates hiring a temporary building inspector at the annual cost of \$165,700. This service will require the developer to pay the full cost of the service, which includes salary and benefits for the building inspector and an administrative fee.

Recommendations:

1. Approve DR Horton's request for the City to hire a temporary dedicated building inspector.
2. Approve a budget appropriation in the amount of \$165,700, less the administrative fee, into the Building & Safety Division's budget.

- * 10. **Receive Comments on Grand Jury Report Addressing Disaster Preparedness Improvements Needed in the County (Staff Contact: Americo Silvi, 586-2827)**

Background: The Santa Clara County Civil Grand Jury issued a public report on May 22, 2007 addressing disaster preparedness in the county. The Grand Jury surveyed five of the County's fifteen cities to evaluate three disaster preparedness areas: (1) ability to call back personnel for emergencies, (2) equipment availability, and (3) seismic security of communications equipment. The report indicated that no improvements were needed in the equipment availability, but that improvements were needed in the other two areas.

The City of Milpitas was not included in the report. The Fire Department prepared a memorandum to the City Manager highlighting what the Grand Jury would have found had Milpitas been one of the sample cities. A copy of that report is included with the agenda packet.

Recommendation: Receive report from Fire Chief on reply to Grand Jury.

- * 11. **Accept the Wal-Mart Safe Neighborhood Heroes Grant (Staff Contact: Sandy Holliday, 586-2433)**

Background: The Wal-Mart Foundation, through Milpitas Wal-Mart Store #2119, has donated a check in the amount of \$1,250 to the Milpitas Police Department under the auspices of its "Safe Neighborhood Heroes" grant program. There are no specific requirements concerning how these funds are to be expended, except that they are to support city safety through community involvement.

The Police Department is in receipt of this check, and recommends that the funds be utilized to purchase a Philips HeartStart OnSite Defibrillator to support the department's lifesaving efforts.

Recommendation: Authorize the Police Department to accept Wal-Mart funds in the amount of \$1,250, and to purchase the Model M5066A HeartStart OnSite Defibrillator.

XVII. ORDINANCES

- * **12. Waive Second Reading and Adopt Ordinance No. 65.135 requiring Automatic Gas Shut-off Devices on new buildings (Staff Contact: Keyvan Irannejad, 586-3244)**

Background: On May 1, 2007, the City Council made a motion to develop an ordinance to require installation of Automatic Gas Shut-off devices on gas lines serving new buildings as recommended by Citizen Emergency Preparedness Advisory Commission (CEPAC).

Recommendations:

1. Waive the second reading of the Ordinance.
2. Adopt Ordinance Number 65.135 enacted as Chapter 170, Title II of the Milpitas Municipal Code to require the installation of Excess Flow Gas Shut-Off Devices (non-motion sensitive) or Seismic Gas Shut-Off Devices that are activated by motion in new construction.

- * **13. Waive Second Reading and Adopt Ordinance No 197.10, Approving the Reorganization of Parks and Recreation by Amending Section 1.00 of Chapter 3, Title VI of the Milpitas Municipal Code Related to Departments (Staff Contact: Emma Karlen, 586-3145)**

Background: Ordinance No. 197.10 was introduced at the June 5th City Council meeting. The proposed ordinance amends the City's Municipal Code to reflect the reorganization of Parks Function and Recreation Services Division into one department.

Recommendation: Waive second reading and adopt Ordinance No. 197.10.

- * **14. Waive Second Reading and Adopt Ordinances No. 192.20 and No. 192.21, Adopting the Milpitas Redevelopment Agency Program to Acquire Real Property by Eminent Domain (Staff Contact: Diana Whitecar, 586-3059)**

Background: On June 5th, the City Council introduced Ordinances 192.20 and 192.21 describing the Milpitas Redevelopment Agency's Eminent Domain Program for both Milpitas Redevelopment Project Area No. 1 and the Great Mall Redevelopment Project Area. The need for a local Eminent Domain Program is a result of Senate Bill 53, which became effective in 2007. SB 53 amended California Redevelopment Law and requires all redevelopment agencies to adopt an ordinance by July 1, 2007 that describes their redevelopment agency' program concerning the use of eminent domain in the acquisition of property. This requirement applies to all existing redevelopment plans adoption prior to January 1, 2007, including those that have no or limited use of eminent domain.

Milpitas Project Area No. 1 allows for the power of eminent domain to be employed by the Agency to acquire real non-residential property in the Midtown Added Area only. The Great Mall project area plan does not include the right of eminent domain.

Council is requested to adopt the ordinances as described below.

Recommendations:

1. Waive second reading of Ordinance No. 192.20.
2. Adopt Ordinance No. 192.20 Describing the Redevelopment Agency's Eminent Domain Program for the Amended and Restated Redevelopment Plan for Milpitas Project Area No. 1 for the purpose of complying with Section 33342.7 of the California Community Redevelopment Law.

3. Waive second reading of Ordinance No. 192.21.
4. Adopt Ordinance 192.21 Describing the Redevelopment Agency Eminent Domain Program for the Great Mall Redevelopment Plan for the purpose of complying with Section 33342.7 of the California Community Redevelopment Law.

*** 15. Waive Second Reading and Adopt Ordinance 270.2 Prohibiting Medical Marijuana Dispensaries in Milpitas (Staff Contact: Peter Spoerl, 586-3040)**

Background: On May 15, 2007, the City Council received a staff report from the City Attorney's office detailing various options available to the City upon expiration of the urgency ordinance, adopted in 2005, that currently prohibits establishment and operation of medical marijuana dispensaries within City limits.

Following discussion of the staff presentation, Council directed staff to return with an ordinance prohibiting the establishment and operation of such facilities. On June 13, 2007, the Planning Commission was scheduled to hear a staff presentation, hold a public hearing, to deliberate and make a recommendation to the City Council on proposed Ordinance No. 270.2, which would make text amendments to the Zoning Ordinance (ZT2007-3). On June 14, 2007, the City Council was recommended to introduce Ordinance No. 270.2, to hear a staff report and receive public comments. Pending the City Council's decision to waive the first reading and introduce the ordinance on June 14, Ordinance No. 270.2 was anticipated to then go before the City Council for its second reading and adoption at this meeting June 19, 2007.

The draft ordinance (in agenda packet) would add a new Chapter 5 to Title XI of the Milpitas Municipal Code prohibiting the establishment and operation of medical marijuana dispensaries. It provides a broad definition of "medical marijuana dispensary" referencing applicable provisions of state law, but also includes a list of specified exceptions for certain health care facilities that would not be subject to the prohibition, provided they are licensed (per state Health and Safety Code and otherwise comply with the Milpitas Municipal Code).

Exceptions would apply to clinics, health care facilities, residential health care facilities for persons with chronic life-threatening illnesses, residential health care facilities for the elderly, and hospices or home health agencies, and are generally intended to allow for legitimate uses and prescription of medical marijuana under state law in state-licensed facilities that do not operate as medical marijuana dispensaries. The ordinance would prohibit medical marijuana dispensaries in all zoning districts, provide that any violation of the Chapter constitutes a misdemeanor, that anyone violating the chapter shall be guilty of a separate misdemeanor offense for each and every day of violation under the ordinance, and that violations shall constitute a nuisance subject to abatement and injunctive relief from the courts.

Recommendation: Pending the first reading and introduction of Ordinance No. 270.2:

1. Waive the second reading of the ordinance.
2. Adopt Ordinance No. 270.2, adding a new Chapter 5 to Title XI of the Milpitas Municipal Code establishing a prohibition on establishment and operation of Medical Marijuana Dispensaries.

XVIII. RESOLUTIONS

16. Adopt Resolution Approving Memorandum of Understanding with Milpitas Employees Association (MEA) (Staff Contact: Carmen Valdez, 586-3086)

Background: The most recent Memorandum of Understanding with the Milpitas Employees Association (MEA) expired on December 31, 2006. City representatives and representatives from MEA met and conferred in good faith to negotiate a new contract. Agreement has been reached with a new successor Memorandum of Understanding with effective dates of January 1, 2007 to June 30, 2010, which is included in the Council's agenda packet.

Recommendation: Adopt Resolution approving the Memorandum of Understanding with the Milpitas Employees Association (MEA) covering the period January 1, 2007 through June 30, 2010.

*** 17. Adopt Resolution Granting Initial Acceptance for the Hetch-Hetchy Right-of-Way Landscape Renovation, Project No. 5053 (Staff Contact: Greg Armendariz, 586-3317)**

Background: This project provided a new asphalt walkway including lawn and irrigation on Hetch-Hetchy right-of-way from Washington Drive to Coelho Street. City Council at its May 16, 2006 meeting awarded the project to RMT Landscape Contractors, Inc. The project has been completed, and staff recommends that Council grant an initial acceptance and authorizes the reduction of the contractor's faithful performance bond to 10% of the contract in the amount of \$15,000. Additional information is included in the Council packet regarding the lawn.

Recommendation: Adopt resolution granting initial acceptance of Project No. 5053, subject to the one year warranty period and reduction of the faithful performance bond to \$15,000.

XIX. BIDS AND CONTRACTS

*** 18. Authorize the City Manager to Accept Office of Grants and Training Preparedness Directorate Grant Funds (Staff Contact: Michael Lopez, 586-2802)**

Background: The City of Milpitas Fire Department's Training Battalion Chief applied for a competitive federal grant covering operations and safety through the Office of Grants and Training Preparedness Directorate, U.S. Department of Homeland Security. The City of Milpitas Fire Department project was approved for \$12,340. The Federal share is \$9,872 and the City of Milpitas cost share is \$2,468. This represents a cost share of 80% to 20% split. The funds will be utilized to purchase training programs that will help protect the health and safety of the public and firefighting personnel against fire and fire-related hazards. The matching funds will come from the Fire Department's 2007-2008 operating budget.

Recommendations:

1. Authorize the City Manager to accept \$9,872 from the Office of Grants and Training Preparedness Directorate.
2. Approve budget appropriation in the amount of \$9,872 from the U.S. Dept. of Homeland Security to the Fire Dept. budget.

*** 19. Authorize the City Manager to Execute the Agreement Between the City of Milpitas and the County of Santa Clara for Acceptance of State Homeland Security Grant Funds (Staff Contact: Americo Silvi, 586-2827)**

Background: The County of Santa Clara (the Operational Area) was again awarded federal grant funds through the Governor's Office of Emergency Services and the California Office of Homeland Security. The funds are distributed from the federal level, to the State Office of Homeland Security, through the Operational Area as a central clearinghouse, and are finally distributed to the local jurisdictions, typically on a per capita basis. This agreement includes funds from the 2006 Emergency Management Performance Grant (EMPG) for the amount of \$8,894.20. These funds are matching funds that the City is expected to match 100% and utilized for completing specific tasks or contracting for specific services, such as for emergency planning or emergency preparedness. The matching funds are available through the Fire Department's disaster preparedness budget.

Recommendations:

1. Authorize the City Manager to execute the agreement between Santa Clara County and the City of Milpitas for acceptance of State Homeland Security (EMPG) grant funds.

2. Approve budget appropriation in the amount of \$8,894.20 from Santa Clara County to the Fire Department's disaster preparedness budget (EMPG Grant).

*** 20. Approve the Third Amendment to the Senior Nutrition Contract with Compass Group USA, Inc. (Bateman Division) and the City of Milpitas, and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. Compass Group USA, Inc. known as Bateman has been catering the Senior Nutrition Program since July 1, 1998. The program serves seniors, sixty years and older, and Bateman meals will be served 150 days per year, an average of 80 meals per day, for a total of 12,240 meals per year. Enclosed in the Council's packet is the Third Amendment to the Contract, between Bateman and the City of Milpitas, which details the specifications of the contract terms for July 1, 2007 through June 30, 2008, for the Senior Nutrition Program food costs totaling \$63,239. Bateman agrees to provide meals at \$3.90 each, which will not exceed the approved budgeted amount of \$63,239, for FY 2007-2008. This contract is subject to approval as to form by the City Attorney. Sufficient funds have been budgeted in Parks & Recreation Services Department FY 2007-2008 operating budget which were approved by the City Council of June 5, 2007.

Recommendation: Approve the third amendment, subject to approval as to form by the City Attorney, to the contract and authorize payment to Bateman, Compass Group USA, Inc. for the period July 1, 2007 through June 30, 2008, not to exceed \$3.90 per meal for a total of \$63,239 for the fiscal year.

*** 21. Approve the Senior Nutrition Contract Between the County of Santa Clara (Social Services) and the City of Milpitas, and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

Background: The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older and serves an average of 85 meals per day, 249 days per year, for a total of 21,165 meals per year. Enclosed in the Council's agenda packet is a copy of the Contract between the County of Santa Clara (Social Services) and the City of Milpitas, and is subject to approval as to form by the City Attorney. The total budget for the FY 2007/08 Nutrition Program, shared by the City of Milpitas and County of Santa Clara, is \$154,460. As outlined in the County's contract, the City's contribution to the program is 50% of the budget or \$77,230, which is included in Parks and Recreation Services' Department operating budget, which was approved by the City Council on June 5, 2007. The term of the contract with the County is for the period of July 1, 2007 through June 30, 2008.

Recommendation: Approve the contract between the County of Santa Clara (Social Services) and the City of Milpitas effective July 1, 2007, through June 30, 2008, and authorize payment to the County of Santa Clara for the amount of the contract, \$154,460.

*** 22. Approve the Third Amendment to the Contract Between the City of Milpitas and New Orient Restaurant, and Authorize Payment (Staff Contact: Jennifer Tagalog, 586-2786)**

Background: The City of Milpitas has contracted with New Orient Restaurant to provide Asian meals twice a week at the Senior Nutrition Program offered at the Milpitas Senior Center since July 1, 2004. Enclosed in the Council's packet is the second Amendment to the contract between the City of Milpitas and New Orient Restaurant, a County of Santa Clara Nutrition Program approved restaurant. All funds have been budgeted in the County of Santa Clara's Senior Nutrition Program budget and Parks and Recreation Services Department FY 07/08 operating budget. The total budget for the 4,950 meals is \$20,246, which does not include the price of milk and the amendment to the contract stipulates invoicing will not exceed \$3.89 per meal. Our current caterer, Bateman, will serve the remaining 16,215 meals.

The City of Milpitas has contracted with the County of Santa Clara in implementing the Senior Nutrition Program since March 1978. The Program serves seniors, sixty years and older, 249 days per year, an average of 85 meals per day, for a total of 21,165 meals per year for both the Asian meals and the meals catered by Bateman. This contract is subject to approval as to form by the City Attorney.

Recommendations:

1. Approve third amendment to the contract between the City of Milpitas and New Orient Restaurant from July 1, 2007 through June 30, 2008, for the Senior Nutrition Program.
2. Authorize payment to New Orient Restaurant for the total amount of this contract, \$20,246, not to exceed \$3.89 per meal. Sufficient funds have been budgeted and approved in Parks and Recreation Services operating budget for FY 07/08.

*** 23. Authorize the City Manager to Execute a Consulting Services Agreement Between the City of Milpitas and HF&H Consultants for Solid Waste Rates and Services Negotiation Assistance (Staff Contact: Kathleen Phalen, 586-3345)**

Background: The City's contract with Allied Waste Services (Allied) calls for biennial adjustment of the rates for solid waste services. The next rate adjustment is scheduled for January 1, 2008. The City and Allied will also consider desired changes to the solid waste contract services during the biennial negotiations. Analysis of solid waste services and costs is complex, so assistance of professional consultants with expertise in current industry costs and practices to assist with the negotiations is necessary.

The City requested proposals for consultant services on April 3, 2007 and received three proposals by the April 24, 2007 deadline. Staff selected HF&H Consultants (HF&H) as the preferred consultant based on review of the proposals and interviews with the three proposers. HF&H has significant experience supporting Bay Area municipalities in solid waste contract negotiations and so is well qualified for this work.

HF&H's consulting services will include evaluating the existing collection and recycling programs, evaluating suggested new services and analyzing both residential and commercial rate structures. Staff has reviewed the scope of work and fee proposal, and believes it to be reasonable. There are available funds in the existing Engineering budget to cover the contract amount of \$54,960.

Recommendation: Authorize the City Manager to execute the agreement with HF&H Consultants in the amount of \$54,960 for negotiation assistance, subject to approval as to form by the City Attorney.

*** 24. Authorize the City Manager to Execute Amendment No. 1 to the Agreement for Commercial Recycling Outreach with Pat Davis Design Group (Staff Contact: Leslie Stobbe, 586-3352)**

Background: Staff requests the City Council authorize the City Manager to execute an amendment to a consultant agreement with Pat Davis Design Group, Inc., for commercial recycling outreach to add scope and extend the term of the agreement. The City's approved Source Reduction & Recycling Element Plan includes Commercial Recycling Program (CRP) outreach to achieve and maintain the State's 50% disposal reduction requirement. On April 3, 2007, the City entered into an agreement with Pat Davis Design Group, Inc., to begin production of a planned "Team Recycle" outreach campaign through June 30, 2007 with a not-to-exceed amount of \$25,000.

This outreach phase is near completion; however, staff recommends continuing the campaign through November 15, 2007, which is America Recycles Day. The campaign has two goals: 1) increase 2007 recycling tonnages of existing customers by 10% from 2006 tonnages, and; 2)

target businesses/non-profit organizations that usually do not participate to sign-up a minimum of 25% within this group. The target businesses for the latter goal are auto body/repair shops, banks, and churches. Agreement extension would be effective July 1, 2007 and extend through November 30, 2007. With the requested amendment, total agreement amount is set not-to-exceed \$55,000. Funding for this project is included in the FY08 Utility Engineering operating budget.

Recommendation: Authorize the City Manager to execute Amendment No. 1 to the agreement for consulting services with Pat Davis Design Group, Inc., in the not-to-exceed amount of \$30,000, subject to approval as to form by the City Attorney.

*** 25. Approve Provisionally Accredited Levee Agreement with the Federal Emergency Management Agency (FEMA) (Staff Contact: Mehdi Khaila, 586-3327)**

Background: The Federal Emergency Management Agency (FEMA) is in the process of converting the Flood Insurance Rate Map (FIRM) from paper to a digital GIS-based format. The flood maps show flood risk zones and their boundaries. As part of this map modernization program, FEMA has implemented a policy to verify the certification status of all levees depicted on the FIRM as providing protection from the base (100-year) flood. The regulatory requirements for accredited levees include design criteria, operation and maintenance.

FEMA has recently adopted a procedure to provisionally accredit levees (PAL) for those that reasonably meet the regulatory requirements. To receive a PAL designation on the new flood map, the levee owner and affected community are required to sign a PAL agreement to provide complete certification documentation within 24 months. The purpose of the PAL is to provide additional time to communities and levee owners to compile the necessary certification documentation while allowing the map modernization to continue.

FEMA has identified three levees in Milpitas that may be eligible for the PAL designation and that need to be re-certified: the northern end of Coyote Creek, the northern end of Lower Penitencia Creek, and Berryessa Creek south of Montague Expressway.

The City and Santa Clara Valley Water District will jointly execute the subject agreement and seek PAL designation for Coyote and Lower Penitencia Creek to meet the regulatory requirements.

Recommendation: Approve and authorize the City Manager to sign the Provisionally Accredited Levee agreement with FEMA, subject to approval as to form by the City Attorney.

*** 26. Approve Encroachment Agreement with Dynamic Details Incorporated, Silicon Valley for Installation Network Cables within City Public Right of Way, Project No. 2492 (Staff Contact: Mehdi Khaila, 586-3328)**

Background: Dynamic Details Incorporated, Silicon Valley is requesting an encroachment permit agreement to install network cables within the City right-of-way to interconnect its existing buildings on Tarob Court.

Recommendation: Approve encroachment permit agreement for Dynamic Details for Project No. 2492 and authorize the City Manager to execute the same, subject to the approval of City Attorney as to form.

*** 27. Award the Bid for Diesel Vehicle Retrofit to Ironman Parts and Service (Staff Contact: Chris Schroeder, 586-3161)**

Background: In order to remain compliant with the Air Resources Board regulations under California Codes, the City is required to retrofit 20% of its diesel fleet with electro mechanical particulate reduction devices by December 31, 2007. Therefore, bids were sent to seven (7) regional and Bay Area emission specialty companies on Purchasing's bidders list. In addition, the

bid was advertised in the Milpitas Post and on the City website. Four bids were received and are summarized below:

<u>Bidder</u>	<u>Total Bid</u>
Ironman Parts & Service	\$30,044.63
Cummings West	\$30,405.75
Diesel Exhaust & Emissions	\$31,927.50
Valley Power Systems	NO BID

Sufficient funding has been allocated in the FY 2006-07 Fleet Maintenance operating budget for the purchase of this work.

Recommendation: Award the bid for Diesel Retrofit work to, and authorize the City Manager to execute a contract with, Ironman Parts & Service in the not-to-exceed amount of \$30,044.63 including sales tax, subject to approval as to form by the City Attorney.

- * **28. Approve Contract Renewal for Excess Workers' Compensation Insurance (Staff Contact: Carmen Valdez, 586-3086)**

Background: The City carries excess workers' compensation insurance in accordance with State law. Our insurance broker, Brown & Brown of California was able to obtain coverage through Arch Insurance Corporation for Fiscal Year 2007-08. Last year (Fiscal Year 2006-07), the cost of the excess workers' compensation was \$180,359. This year staff was quoted an overall rate decrease of 9.6%. The City's self-insured retention is \$1,000,000 for safety employees and \$750,000 for miscellaneous employees. The renewal premium for Fiscal Year 2007-08 is \$163,112, with an additional 2% California Insurance Guarantee Association (CIGA) surcharge, for a total of \$166,374.24. This premium amount is based on the City's payroll.

Recommendation: Approve the acceptance of Arch Insurance Corporation for the City's excess workers' compensation insurance for FY 2007-08 and authorize the City Manager to pay Brown & Brown of California the premium rate, plus CIGA charge of \$166,374.24.

- * **29. Approve Plans and Specifications and Authorize the Advertisement for Bid Proposals for 2008 Slurry Seal Project, Project No. 4242 (Staff Contact: Andrew Brozyna, 586-3315)**

Background: Plans and specifications for Project No. 4242 were completed in accordance with the approved five-year Capital Improvement Program (CIP). The project consists of placing slurry seal on Midwick Drive, Arizona Avenue between Jacklin and Berrendo Drive, Oregon Way, Oregon Court, Corning Avenue between Abel Street and the westerly end of Corning Avenue, Fallen Leaf Drive between Starlite Drive and Cedar Way, Kevenaire Drive, Gordon Street, Campbell Street, Glenn Court, Heather Court, Saturn Court, Wylie Drive between Bixby Drive and Falcato Drive, and Falcato Drive between Lacy Drive and Pedro Avenue.

The Engineer's estimated construction cost for the work is approximately \$200,000 and funds are available in the project budget. The project schedule anticipates award for construction in August 2007. A copy of the project plan title sheet is included in the Council's agenda packets. Complete plans and specifications are available for review in the office of the City Engineer.

Recommendations:

1. Approve plans and specifications for Project No. 4242.
2. Authorize advertising project for bid proposals for 2008 Slurry Seal Project.

- * **30. Approve purchase orders for (1) general legal and personnel services; (2) arbitration, grievance and PERB hearings; and (3) public works and enterprise operations litigation legal services and expenses provided by Meyers Nave for Fiscal Year 2007-08 (Staff Contact: Steve Mattas, 586-3040)**

Background: As part of the approved budget for fiscal year 2007-08 and in anticipation of the transition from contract counsel to in-house counsel that will take place in the next few months, the City Council authorized a total of \$403,000 for general city attorney services, labor negotiations, personnel arbitration, grievance and Public Employment Relations Board (PERB) proceedings, and public works litigation services. The purpose of this staff report is to request that the City Council authorize purchase orders to Meyers Nave for the legal services referenced above.

Specifically, the requested purchase orders include: (1) a purchase order in the amount of \$150,000 for general city attorney and personnel legal services for fiscal year 2007-08 funded from the previously approved City Attorney supplies/services budget and (2) a purchase order in the amount of \$25,000 for arbitration/grievance/PERB proceedings for fiscal year 2007-08 funded from the City Attorney supplies/ services budget and \$50,000 for litigation related to public works and enterprise operations for fiscal year 2007-08 funded from the City Attorney supplies/services budget.

Recommendation: Authorize issuance of purchase orders to Meyers Nave in the amounts of (1) \$150,000 for general personnel and legal services; (2) \$25,000 for personnel arbitration, grievance and PERB proceedings; and (3) \$50,000 for legal services and expenses related to public works and enterprise operations litigation for FY 2007-08.

- * **31. Authorize the City Engineer to Execute a Contract Change Order with O’Grady Paving, Inc. and Approve Budget Appropriation for 2007 Street Resurfacing Project, Project No. 4236 (Staff Contact: Andrew Brozyna, 586-3315)**

Background: The City Council awarded the 2007 Street Resurfacing Project to O’Grady Paving, Inc. on April 17, 2007, and construction is underway. The project consists of roadway reconstruction of a number of streets selected from the City’s Pavement Management System. Completion of this work is anticipated by September 2007.

Staff recommends roadway resurfacing of Yosemite Drive, between Bryce Court and Temple Drive, to be included in the 2007 Street Resurfacing Project. Staff concluded that it is cost effective to include this needed work with the current resurfacing project since Yosemite Drive is in close proximity of the project limits. Staff negotiated a fee not to exceed \$200,000 with the contractor for this additional work, and the approval of a contract change order is requested.

Staff also requests an additional \$20,000 to be added for project administration and contingency. A budget appropriation in the amount of \$220,000 from the Street Fund is required to approve this change order.

Recommendations:

1. Authorize the City Engineer to execute the Contract Change Order with O’Grady Paving, Inc. for the not to exceed amount of \$200,000.
2. Approve a budget appropriation for \$220,000.

XX. CLAIMS AND DEMANDS

- * **32. Approve Payment Request to Valley Oil for City’s Annual Supply of Diesel and Unleaded Fuel (Staff Contact: Chris Schroeder, 586-3162)**

Background: In accordance with Ordinance No. 23.10 of the Municipal Code, Purchasing requests approval of \$300,000 to Valley Oil for the City’s Annual Supply of Diesel and Unleaded Fuel.

On February 20, 2007, the City Council awarded the bid for a multi-year contract for the purchase and delivery of diesel and unleaded fuel to its two large and eighteen small gasoline and diesel tanks at different intervals and various locations around the City. This will be year one (1)

of the three (3) option years to extend the contract. Fuel prices are based on the weekly Oil Price Information Service (OPIS), plus the contract margin. Based on previous usage and current fuel prices, the amount request is estimated to cover consumption from July to December of 2007.

Funds are available from the Fleet Maintenance Operating Budget for FY 2007-08 for this purchase.

Recommendation: Approve the payment request of \$300,000 to Valley Oil for the City's annual supply of diesel and unleaded fuel.

XXI. ADJOURNMENT

**NEXT REGULARLY SCHEDULED COUNCIL MEETING
TUESDAY, AUGUST 7, 2007, AT 7:00 P.M.**